IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.899 OF 2000

The Commissioner of Income Tax
Mumbai City XIII, Mumbai ...Appellants.

V/s.

Shree Giriraj Construction Co.
Mumbai ...Respondent.

Mr.A.K.Kotangale for the Appellants.
Mrs. Vasanti B. Patel for the Respondent.

CORAM: S.RADHAKRISHNAN &
J.H.BHATIA, JJ.
DATE : 27th June, 2005.
P.C.:

1. Heard the learned counsel for the Appellants and the Respondent. Perused Tribunal order dated 8th December, 1999. The above Appellants are seeking to raise the following two substantial questions of law.

i.Whether on the facts and in law I.T.A.T. was right to hold that the transactions between the assessee (M/s. Shree Giriraj Construction Co.) the first party to the agreement and the second party (M/s.Nand Kishore Holding & Construction Pvt. Ltd.), was not final in view of the ongoing litigation while it had already held on facts

that the assessee's unilateral action to end the agreement did not lead to the conclusion that there was no complete sale of the development right ?

ii.Whether on the facts and in law I.T.A.T. was right after concluding that sale was complete to hold further that actual receipt of Rs.53 lakhs only was assessable and not Rs.4,03,48,800/- to be received as per agreement ignoring that under section 5 of the Income Tax Act the whole amount was taxable on accrual basis in the A.Y.1992-93 in view of mercantile system followed by the Assessee ?

2. The Tribunal has very clearly observed that there has been a protracted litigation between the parties and has observed as under:-

"But the amount of Rs.53 lacs had been received by it prior thereto. Therefore, under these circumstances and having regard to the protracted litigation and also taking note of the fact that the matters have not reached finally even as on date, we are of the view

that the departmental authorities were not justified in taking the entire amount of Rs.4,03,48,800/- as the income by way of sale price. We further told that the amount of Rs.53 lacs can however be taken as the sale price, and the profits can be computed on that basis. We hold accordingly and direct the Assessing Officer to modify the computation of the income.

17. The question of taxing the balance of the sale consideration may be considered as and when the assessee gets a clear title or right to receive the same".

3. Under these circumstances, we do not find any substantial question of law involved in this Appeal. Hence, the Appeal stands dismissed.

(S.RADHAKRISHNAN,J.)

(J.H.BHATIA, J.)